

AMENDED IN ASSEMBLY JUNE 30, 2004

AMENDED IN ASSEMBLY JUNE 8, 2004

AMENDED IN SENATE MAY 4, 2004

AMENDED IN SENATE APRIL 28, 2004

AMENDED IN SENATE MARCH 30, 2004

SENATE BILL

No. 1336

Introduced by Senator Burton
(Principal coauthor: Senator Brulte)
(Coauthor: Senator Battin)

(Coauthors: Assembly Members ~~Bogh~~ *Benoit, Bogh*, and Kehoe)

February 18, 2004

An act to add Section 1638.1 to the Business and Professions Code, relating to oral and maxillofacial surgery, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1336, as amended, Burton. Oral and maxillofacial surgery.

Existing law, the Dental Practice Act, provides for the licensure and regulation of the practice of dentistry by the ~~Board of Dental Examiners~~ *Dental Board of California*. Existing law requires all funds received under the act to be placed in the State Dentistry Fund, which is continuously appropriated.

This bill would require a person who is licensed to practice dentistry who is not a physician and surgeon to apply for and receive a permit to perform elective facial cosmetic surgery prior to performing elective facial cosmetic surgery. The bill would also require an applicant for a

permit to furnish specified information and to pay an application fee of \$150. The bill would prohibit a licensee from performing such a surgery procedure, except at ~~certain~~ specified health facilities.

The bill would authorize the board to adopt regulations related to the permits, and would require the board to appoint a credentialing committee to review applicant qualifications and recommend whether or not to issue a permit to the applicant.

Because this bill would increase the amount of fees deposited in the State Dentistry Fund, a continuously appropriated fund, it would make an appropriation.

Because a willful violation of this bill's provisions would be a misdemeanor, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1638.1 is added to the Business and
2 Professions Code, to read:

3 1638.1. (a) (1) A person licensed pursuant to Section 1634
4 who wishes to perform elective facial cosmetic surgery shall first
5 apply for and receive a permit to perform elective facial cosmetic
6 surgery from the board. *The initial permit issued to a person who*
7 *otherwise meets the requirements of this section shall be*
8 *provisional.*

9 (2) *A provisional permit shall be valid for up to two years.*
10 *During the two-year period, the provisional permitholder must*
11 *satisfy the requirements of subdivision (g), and shall not perform*
12 *facial cosmetic surgical procedures except at a licensed general*
13 *acute care hospital or a licensed outpatient surgical facility as*
14 *long as the permit is provisional.*

15 ~~(2) A~~

16 (3) *A nonprovisional permit issued pursuant to this section*
17 *shall be valid for a period of five years and must be renewed by the*

1 permitholder in the same manner required for initial issuance,
2 *except that a renewal shall not require the applicant to comply with*
3 *subdivision (g).*

4 (b) The board may adopt regulations for the issuance of the
5 permit that it deems necessary to protect the health, safety, and
6 welfare of the public.

7 (c) A licensee may obtain a permit to perform elective facial
8 cosmetic surgery by furnishing all of the following information on
9 an application form approved by the board:

10 (1) Proof of successful completion of an oral and maxillofacial
11 surgery residency program accredited by the Commission on
12 Dental Accreditation of the American Dental Association.

13 (2) Proof that the applicant has satisfied the criteria specified
14 in either subparagraph (A) or (B):

15 (A) (i) Is certified, or is a candidate for certification, by the
16 American Board of Oral and Maxillofacial Surgery.

17 (ii) Submits to the board a letter from the program director of
18 the accredited residency program, or from the director of a
19 postresidency fellowship program accredited by the Commission
20 on Dental Accreditation of the American Dental Association,
21 stating that the licensee has the education, training, and
22 competence necessary to perform the surgical procedures that the
23 licensee has notified the board he or she intends to perform.

24 (iii) Submits documentation to the board of at least 10
25 operative reports from residency training or proctored procedures
26 that are representative of procedures that the licensee intends to
27 perform from both of the following categories:

28 (I) Cosmetic contouring of the osteocartilaginous facial
29 structure, which may include, but is not limited to, rhinoplasty and
30 otoplasty.

31 (II) Cosmetic soft tissue contouring or rejuvenation, which
32 may include, but is not limited to, facelift, blepharoplasty, facial
33 skin resurfacing, or lip augmentation.

34 (iv) *Submits documentation to the board showing the surgical*
35 *privileges the applicant possesses at any licensed general acute*
36 *care hospital and any licensed outpatient surgical facility in this*
37 *state.*

38 (B) (i) Has been granted privileges by the medical staff at a
39 licensed general acute care hospital to perform the surgical
40 procedures at that hospital.

1 (ii) Submits to the board the documentation described in clause
2 (iii) of subparagraph (A).

3 (3) Proof that the applicant is on active status on the staff of a
4 general acute care hospital and maintains the necessary privileges
5 based on the bylaws of the hospital to maintain that status.

6 (d) The application shall be accompanied by an application fee
7 of one hundred-and fifty dollars (\$150).

8 (e) (1) The board shall appoint a credentialing committee to
9 review the qualifications of each applicant for a permit. Upon
10 completion of the review of an applicant, the committee shall
11 make a recommendation to the board on whether to issue or not
12 issue a ~~permit to the applicant, and on the terms or extent of the~~
13 ~~permit.~~ *permit to the applicant. The permit may be unqualified,*
14 *entitling the permitholder to perform any facial cosmetic surgical*
15 *procedure authorized by this section, or it may contain limitations*
16 *where the credentialing committee is not satisfied that the*
17 *applicant has the training or competence to perform certain types*
18 *or classes of procedures, or where the applicant has not requested*
19 *or provided adequate documentation for all procedures authorized*
20 *by this section.*

21 (2) The credentialing committee shall be comprised of five
22 members, as follows:

23 (A) A physician and surgeon with a specialty in plastic and
24 reconstructive surgery who maintains active status on the staff of
25 a licensed general acute care hospital in this state.

26 (B) A physician and surgeon with a specialty in otolaryngology
27 who maintains active status on the staff of a licensed general acute
28 care hospital in this state.

29 (C) Three oral and maxillofacial surgeons licensed by the
30 board who are board certified by the American Board of Oral and
31 Maxillofacial Surgeons, and who maintain active status on the
32 staff of a licensed general acute care hospital in this state, at least
33 one of whom shall be licensed as a physician and surgeon in this
34 state. Two years after the effective date of this section, any oral and
35 maxillofacial surgeon appointed to the committee who is not
36 licensed as a physician and surgeon shall hold a permit pursuant
37 to this section.

38 (3) The board shall solicit from the following organizations
39 input and recommendations regarding members to be appointed to
40 the credentialing committee:

1 (A) The Medical Board of California.

2 (B) The California Dental Association.

3 (C) The California Association of Oral and Maxillofacial
4 Surgeons.

5 (D) The California Medical Association.

6 (E) The California Society of Plastic Surgeons.

7 (F) Any other source that the board deems appropriate.

8 (4) *In making the appointments to the credentialing committee*
9 *described in subparagraphs (A) and (B) of paragraph (2), the*
10 *board shall make its appointment from a list for each position of*
11 *at least five qualified candidates submitted to the board by the*
12 *California Medical Association, which shall consult with the*
13 *Medical Board of California and the California Society of Plastic*
14 *Surgeons. Nothing in this paragraph shall be interpreted to*
15 *prevent a quorum of the credentialing committee from meeting by*
16 *virtue of a delay in submitting a list to the board.*

17 (5) The credentialing committee shall meet at a time and place
18 directed by the board to evaluate applicants for permits. A quorum
19 of three members shall be required for the committee to consider
20 applicants and make recommendations to the board.

21 (f) A licensee may not perform any elective, facial cosmetic
22 surgical procedure except at a general acute care hospital, a
23 licensed outpatient surgical facility, or a surgery center or office
24 surgical facility accredited by the Joint Commission on
25 Accreditation of Healthcare Organizations (JCAHO), by the
26 American Association for Ambulatory Health Care (AAAHC), by
27 the Medicare program, or approved by the Medical Board of
28 California pursuant to subdivision (g) of Section 1248.1 of the
29 Health and Safety Code.

30 (g) (1) *The holder of a provisional permit shall perform five*
31 *proctored procedures in each of the two classes of procedures*
32 *described in paragraph (2) of subdivision (c) at either a general*
33 *acute care hospital or a licensed outpatient surgical facility. An*
34 *applicant who is seeking a permit to perform only procedures in*
35 *one of the classes shall only be required to perform five proctored*
36 *procedures in that class. The reports of the proctor for these*
37 *procedures shall be submitted to the credentialing committee*
38 *within seven days of their completion. When the credentialing*
39 *committee has received and reviewed the 10 reports, it shall decide*

1 *whether to recommend to the board that the permit be made*
2 *nonprovisional.*

3 (2) *For purposes of this subdivision, any person who has*
4 *surgical privileges at a general acute care hospital or licensed*
5 *outpatient surgical facility, or holds a permit issued pursuant to*
6 *this section for the surgical procedure to be proctored, is eligible*
7 *to act as a proctor.*

8 (3) *A licensed general acute care hospital, licensed outpatient*
9 *surgical facility, and the medical staff of these facilities shall not*
10 *discriminate based on the degree or degrees held by the surgeon,*
11 *or the specialty of the surgeon, with respect to proctoring or use*
12 *of facilities for proctoring pursuant to this section.*

13 (h) *For purposes of this section, the following terms have the*
14 *following meanings:*

15 (1) “Elective cosmetic surgery” means any procedure defined
16 as cosmetic surgery in subdivision (d) of Section 1367.63 of the
17 Health and Safety Code, and excludes any procedure that
18 constitutes reconstructive surgery, as defined in subdivision (c) of
19 Section 1367.63 of the Health and Safety Code.

20 (2) “Facial” means those regions of the human body described
21 in Section 1625 and in any regulations adopted pursuant to that
22 section by the board.

23 ~~(h)~~

24 (i) A holder of a permit issued pursuant to this section shall not
25 perform elective facial cosmetic surgical procedures unless he or
26 she has malpractice insurance or other financial security
27 protection that would satisfy the requirements of Section 2216.2.

28 SEC. 2. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 the only costs that may be incurred by a local agency or school
31 district will be incurred because this act creates a new crime or
32 infraction, eliminates a crime or infraction, or changes the penalty
33 for a crime or infraction, within the meaning of Section 17556 of
34 the Government Code, or changes the definition of a crime within
35 the meaning of Section 6 of Article XIII B of the California
36 Constitution.

